

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.
W. A. DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE STATE OF
OKLAHOMA and OKLAHOMA SECRETARY
OF THE ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiff,

vs.

) 05-CV-0329 GKF-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
AVIAGEN, INC., CAL-MAINE FOODS, INC.,
CAL-MAINE FARMS, INC., CARGILL, INC.,
CARGILL TURKEY PRODUCTION, LLC,
GEORGE'S, INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., SIMMONS FOODS, INC.,
and WILLOW BROOK FOODS, INC.,

Defendants.

DECLARATION OF NICOLE M. LONGWELL

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, Nicole M. Longwell, being duly sworn, deposes and says:

1. That I am of legal age and qualified to attest the facts contained herein.
2. That I am an attorney and member of the firm of McDaniel, Hixon, Longwell & Acord, PLLC., and counsel for Defendant Peterson Farms, Inc.

Data Production Issues

3. That I have been involved in reviewing the incoming physical documents and electronic production in the above styled case including the production of the materials submitted to the Defendants by the State of Oklahoma's experts in this matter.

4. I have reviewed the documents and electronic production produced to date by the experts for the State of Oklahoma and have found the volume to be very large. (Ex. "A").

Defendants have, to date, received one 750 GB removable hard drive containing 690 GB of data, and 12 CDs and DVDs, which contain an additional 13 GB of data.

5. The indexes of the hard drive, CDs, and DVDs indicate that the State of Oklahoma's experts have produced almost 800,000 files. Included in those 800,000 files are 679 zip files and 7 compressed email files. Once opened, those zip files and compressed email files are likely to yield additional innumerable files.

6. Furthermore, the 750 GB hard drive received from the State of Oklahoma is not organized in a reasonably usable manner. For example, within the materials produced for Dr. Berton Fisher is a folder identified as correspondence. Within that file folder, there were GIS files and charts as well as correspondence; this is simply one of many such file folders. Simply reorganizing these files into a usable format in order to evaluate what documents to forward to Defendants' experts has taken a considerable amount of time.

7. Additionally, it appears from first glance that many of the video files produced on the removable hard drive are duplicative of the video and photo files the Plaintiff's experts' previously produced as either a part of their disclosures for the Preliminary Injunction Hearing or as a part of the State's own disclosures. Many of these videos and photo files are related to the State of Oklahoma's sampling efforts. In order to avoid confusion for those experts who will be utilizing this information to form their opinions, each of these files will have to be reviewed and compared to the prior productions before they can be sent to and evaluated by an expert.

8. Due to the volume of the materials and manner produced, it has taken Defendants multiple weeks to provide this information to their experts. For example, Dr. Berton Fisher has produced over 412 GB of materials. Dr. Fisher's materials alone take over twelve hours to download a single copy from the hard drive produced by the State of Oklahoma to corresponding hard drive. In addition to these issues, many others exist. For example, the State's experts were not consistent in how documents which were produced by the Defendants were identified. In some instances, a State's expert simply re-bates numbered the Defendant's document with a new bates number. In other instances, the State's expert referenced the bates number affixed by the Defendant. This lack of consistency requires Defendants' experts to look at both the hard drive and the list of referenced bates numbered documents to simply determine the location of the document. Ultimately, the manner in which the State's experts' produced their materials could be considered a document dump.

Lack of Data Produced by the State

9. During the recent depositions of the State of Oklahoma's 30(b)(6) witnesses, Carl Parrott and Robert Huber, it became apparent that three electronic databases responsive to Defendants' outstanding discovery requests had not been produced by the State of Oklahoma during their ESI production. In Mr. Huber's deposition on May 26, 2008, he referenced a database that identifies sewage permits, ownership, installation dates, and other information regarding septic systems in the IRW. (Depo. of Robert Huber, pgs. 38-45, attached hereto as Ex. "B.") Additionally, although complaints from the four counties in the IRW were printed out in late October 2006 and made available to the Defendants during their physical document review

at ODEQ in November 2007, the database from which these reports were printed was not provided to the Defendants. (Ex. "B", pgs. 52-53.) At a minimum, this database should have been provided to the Defendants in the State's electronic data productions.

10. In Carl Parrott's deposition on May 30, 2008, Defendants discovered the existence of a bypass database which is maintained by the ODEQ. (Depo. of Carl Parrott, pgs. 168-171, attached as Ex. "C.") The database contains information about the bypasses and overflows experienced by the Oklahoma Publicly Owned Water Treatment facilities within the IRW. These items were the subject of Peterson's discovery to the ODEQ and the State generally. (Ex. "D," Nos. 13, 14 and 45.) Each of these databases contains information relevant to other potential sources of the alleged pollutants which the State of Oklahoma claims have resulted in damage to the IRW. These databases should have been produced a year ago. The data contained within these databases will be crucial to the Defendants' experts' opinions as to alternative sources.

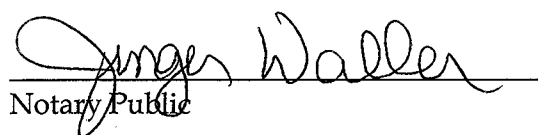
11. On June 4, 2008, Scott McDaniel sent a request to the State of Oklahoma demanding the immediate production of these databases and requested a telephone conference with the State of Oklahoma's counsel to discuss the matter on June 9, 2008. (McDaniel Letter, attached as Ex. "E.") On June 5, 2008, Bob Nance, counsel for the State of Oklahoma, indicated by letter that the State would not participate in a telephone conference on June 5, 2008, but would respond in writing sometime during that week. (Nance letter, attached as Ex. "F.") At this time, the Defendants have not received these databases. Moreover, because the contents of these databases are not fully known, the time it will take for the Defendants' experts to evaluate the data contained therein is also not fully known. However, it is safe to assume that obtaining the databases, and then subsequently producing them to the appropriate expert is likely to take up most of the 70 days remaining before Defendants' expert reports are due.

12. I have reviewed the electronic data produced by the State of Oklahoma and have not identified these databases. (See Ex. "G.") Additionally, it appears based upon correspondence from the State of Oklahoma that it never intended on producing these databases to the Defendants. (See Ex. "H.")

FURTHER AFFIANT SAYS NOT.


 Nicole M. Longwell

Subscribed and sworn to before me this 12th day of June, 2008.


 Notary Public

My Commission Expires:

